

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEBRASKA

UNITED STATES OF AMERICA, )  
                                )  
Plaintiff,                 )                           8:13CR106  
                                )  
vs.                         )                           ORDER  
                                )  
WARREN TIDWELL,            )  
                                )  
Defendant.                 )

This matter is before the court on the motion for defense litigation costs (Filing No. 322). Tidwell seeks the subpoena of defense witnesses at government's expense. Fed. R. Crim. P. 17(b) provides:

**(b) Defendant Unable to Pay.** Upon a defendant's ex parte application, the court must order that a subpoena be issued for a named witness if the defendant shows an inability to pay the witness's fees and the necessity of the witness's presence for an adequate defense. If the court orders a subpoena to be issued, the process costs and witness fees will be paid in the same manner as those paid for witnesses the government subpoenas. (Emphasis supplied).

Fed. R. Crim. P. 17(d) provides:

**(d) Service.** A marshal, a deputy marshal, or any nonparty who is at least 18 years old may serve a subpoena. The server must deliver a copy of the subpoena to the witness and must tender to the witness one day's witness-attendance fee and the legal mileage allowance. The server need not tender the attendance fee or mileage allowance when the United States, a federal officer, or a federal agency has requested the subpoena. (Emphasis supplied).

Tidwell has filed a Financial Affidavit demonstrating his inability to pay (Filing No. 286-Sealed). Accordingly, Tidwell's counsel may file an *ex parte* application for the issuance of trial subpoenas for witnesses which will include their name, address and a summary of their expected testimony which establishes the necessity of their testimony for an adequate defense. The application shall be accompanied by a completed subpoena form for each witness which are available from the Clerk on the court's website. The application will be reviewed by the trial judge to determine the necessity of the witness for trial for an adequate

defense and the trial judge will direct the Clerk to issue such subpoenas as the trial judge determines are necessary.

Payments to witnesses who testify in this case pursuant to the court's order will be made by the U.S. Marshal following the witness's testimony pursuant to Form OBD-3. A copy of such form is attached to this Order. Counsel for Tidwell shall contact the U.S. Marshal for directions as to completing such form and directing the witness to the U.S. Marshal's office for payment.

**IT IS SO ORDERED.**

DATED this 6th day of February, 2015.

BY THE COURT:

s/ Thomas D. Thalken  
United States Magistrate Judge

U.S. Department of Justice  
Washington, D.C. 20530

Fact Witness Voucher

**THIS IS A 4-PART FORM. FILL OUT FORM AND PRINT 4 COPIES. SIGN AS NEEDED AND ROUTE AS SPECIFIED BELOW.**

**Page 1 of 3**

Check One I (was) (was not) a United States citizen at the time of attendance  
 I (was) (was not) a Federal Government employee at the time of attendance  
 I (Did) (did not) receive a cash or check advance. Total advance issued: \$ \_\_\_\_\_ From: \_\_\_\_\_

Witness Name:	Court Doc. No.:		
Social Security Number:	Case Name:		
Address:	District:		
City: _____	State: _____	Zip: _____	
Telephone No. (including area code):	GTA	Transportation	Lodging

<b>PART I - Attendance Certification (by Government Official)</b> (Retention of these fees is considered taxable income and reportable to IRS)			Object Class	Amounts (Dollars) (To Be completed by US Marshals)
A. Attendance Fees				
Deposition Dates	\$40 @ _____ days		1126	
Grand Jury/Trial Attendance Date (Including Travel)	\$40 @ _____ days		1156	
Pretrial Attendance Dates (Including Travel)	\$40 @ _____ days		1194	
Detained Dates - Citizen/Visitor In Custody	\$40 @ _____ days		1193	
Detained Dates - Deportable Alien in Custody	\$1 @ _____ days		1195	
			Total Fees	
B. Attendance Attestation: I attest that the witness named above attended in the case or matter indicated and is entitled to the statutory allowance for attendance and travel. In proceedings before U.S. Magistrate Judges where more than four witnesses were called, the Magistrate also attests that the approval and certificate of the Litigating Trial Office were first obtained.				
_____ Signature		_____ Title of Authorized Government Official		_____ Date

This form is continued on Page 2

**Original - USMS Trial District Office****Copy 1 - Paying Office****Copy 2 - DOJ Litigating Trial Office****Copy 3 - Witness****Form OBD-3 (Revised 4-2005)****Previous Editions are Obsolete**

PART II - Allowances				2191		
C. Travel by Carrier (Receipts required if paid by witness) (DO NOT claim if paid by Government)	Check one	Train	Bus			Airplane
D. Travel by Privately Owned Vehicle:		Auto/Truck/Van	Motorcycle	Airplane		
		Round trip mileage _____	@ \$_____	Per mile		
		Total no. of trips _____				
			Less advance received \$ _____		2192	
E. Local Transportation & Other Expenses: (e.g., subway, bus, taxi, tolls, all parking, etc.) <i>(Receipts required for parking and expenses over \$25.00) (Gratuities are limited to taxi and shuttle services up to 15%)</i>						
<i>List (item and amount)</i>					2193	
F. Meals and Lodging:						
1. Travel days (½ day's M&IE per day) @ \$_____ x _____ Day(s) = \$_____						
2. Days away from home (full day's M&IE per day) @ \$_____ x _____ Day(s) = \$_____						
3. Actual cost of lodging, not to exceed \$_____ @ \$_____ x _____ Day(s) = \$_____ <i>(DO NOT claim if paid by Government) (Receipts are required if paid by witness)</i>						
	Less advance received \$ _____				2194	
G. Witness Certification: I certify that this voucher is true and correct to the best of my knowledge and belief, and that payment or credit has not been received by me. (If not a citizen, present your Alien Registration Record with this form)						
Witness Signature	Date	Alien Registration Record No.				
H. Claim Verification: Based upon the above information and receipts furnished by the witness, I verify the above information is true and correct to the best of my knowledge.						
Signature	Title of Authorized Government Official	Date			Net Amount Paid	
PART III - Certification						
THIS VOUCHER IS CERTIFIED CORRECT AND PROPER FOR PAYMENT						
Signature	Title of Authorized Certifying Officer		Date			
PART IV - Disbursement (For Finance Office use only)						
Accounting Classification _____						
Check/Draft No. _____ Voucher No. _____						
Signature	Title of Disbursing Officer		Date			

The Privacy Act Statement and instructions for completion of this form are contained on Page 3 of this form

## INSTRUCTIONS FOR COMPLETING THIS FORM

To be completed by the witness

1. At the top of the form, check the appropriate word(s) to indicate if:

You were or were not a United States citizen at the time you appeared to testify. If you are not a citizen, you will be required to show proof of your resident or visitor status.

You were or were not a federal employee at the time you appeared to testify. The fees and allowances on this form do not apply to federal employees. If you are a federal employee, please request instructions for obtaining reimbursement.

You (DID) or (DID NOT) receive a check or cash advance for your expenses in traveling to court. If you received an advance, enter the amount and issuing office here.

Indicate and/or verify your name, Social Security Number, address, and telephone number to ensure that they are correct. This will be the address to which any reimbursement to you for fees or allowances will be mailed. Correct any erroneous information and enter any missing information.

**SOCIAL SECURITY NUMBER/PRIVACY ACT NOTICE:** Disclosure of your social security number is mandatory for Federal income tax reporting purposes under the authority of 26 CFR Section 301-6109-1, in order to ensure the accuracy of income computation by the Internal Revenue Service. This information will be used to identify an individual who is compensated by funds of the Department of Justice. Failure to provide this information may result in delay of your compensation, and the Department of Justice will be required to notify the Internal Revenue Service that your number is unknown. This information is being provided on Form 1099 to the Internal Revenue Service.

2. PART II - Allowances

Receipts are required for travel by train, bus or air, ALL PARKING, and other single items over \$25.00. If you parked at an airport or have not yet paid your hotel/motel bill or other item requiring a receipt, it will be necessary for you to mail your receipts to the trial office. Your claim for reimbursement cannot be processed until you furnish all receipts for expenses that you are claiming on this Fact Witness Voucher.

**Please note:** EXPENSES ASSOCIATED WITH YOUR TRAVEL BY YOUR PRIVATELY OWNED VEHICLE ARE LIMITED TO NO GREATER THAN THE COST OF COACH AIRFARE.

The remaining portion of Part II will be completed for you by the Federal government employee assigned to assist you, with the exception of the Witness Certification.

G. **Witness Certification:** Verify that all items under Part II are correct. Any changes to Part II must be effected and signed by the Federal government employee assigned to assist you. Sign your full legal name and the date. If you are not a United States citizen, you will be requested to show proof of your resident or visitor status.

Falsification of an item may constitute a forfeiture of claim (28 U.S.C., Section 2514) and may result in a fine of not more than \$10,000 or imprisonment of not more than 5 years or both (18 U.S.C. 287).

Section B of Part I must be signed by an employee of the office that requested the appearance of the witness. Additionally, Section H of Part II must be signed by an employee of the requesting office attesting to the accuracy and completeness of the expenses claimed by the witness before the form is transmitted to the U.S. Marshals Service for payment. The U.S. Marshals Service will process the Fact Witness Voucher and **MAIL** payment to you at the address indicated on the first page of this form. If you require funds to return home, you must bring this fact to the attention of the individual assigned to assist you.

## INSTRUCTIONS TO COMPLETING OFFICE

Section H of Part II must be signed by an employee of the office who requested the appearance of this witness, before the form is transmitted to the United States Marshals Service. Any revisions to Part II must be initiated by a Federal government employee. Changes made to Part II by the witness will not be honored.

All receipts for claims made in Part II must be attached to the Form OBD-3 before it is transmitted to the United States Marshals Service for payment.

Distribution of the Form OBD-3 shall be as follows: The ORIGINAL signed, completed form is retained by the U.S. Marshals Service. One COPY of the signed, completed form is provided to the Paying Office; one COPY is provided to the DOJ Litigating Trial Office; and one COPY is provided to the witness.